

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID JESSE BROWN,

Plaintiff,

v.

WASHINGTON STATE UNIVERSITY, DAVID
SPROTT, CHERYL OLIVER, LAURA
THOMLE, ASHLEY FAGERLIE, EVAN
HURI, CAITLIN MACKAY, JOHN OR JANE
DOE STUDENT I, JOHN OR JANE DOE
STUDENT II, JOHN OR JANE DOE
STUDENT III, JOHN OR JANE DOE
STUDENT IV, JOHN OR JANE DOE
STUDENT V, ROGER SANDBERG,
CHRISTIAN WUTHRICH, LISA MCINTYRE,
WAYNE POPESKI, SEAN FALCON, JOSH
HART, EDWIN HAMADA, ANITA CORY,
MELYNDA HUSKEY, DANIELLE HESS,
HOWARD GRIMES, JOHN OR JANE DOE
VII, RALPH JENKS, LINDA NELSON,
MONTE GRIFFIN, LORI WIEST, MIKE
DODD, JOHN OR JANE DOE STUDENT VI,
SUNG K. AHN, BERNARD WONG-ON-WING,
SUSAN HE, KEN BUTTERFIELD, BABU
JOHN MARIADOSS, HARRY TURTLE, YANY
GREGOIRE, ROBERT GREENBERG, K.D.
JOSHI, and CHARLES MUNSON, in
their official and individual
capacities,

Defendants.

NO. CV-11-079-EFS

**ORDER GRANTING AND DENYING
IN PART PLAINTIFF'S
MOTIONS RECEIVED BY FAX ON
AUGUST 1, 2011 and
IMPOSING FILING LIMITATION**

On August 1, 2011, the Court received by fax a document sent by Plaintiff David Jesse Brown that includes several different motions: 1) Motion to File by Facsimile Due to "Extraordinary Circumstance," 2) Motion for Extension of Time to File and Serve Summons and Complaint, 3)

1 Motion for Extension of Time to File Notice of Appeal, 4) Motion for
2 Extension of Time to File Motion for Certification of Order for
3 Permission to Appeal, 5) Motion for Certification of Order for Permission
4 to Appeal, 6) Motion for Stay Pending Resolution of Appeals, and 7)
5 Motion for Leave to Amend Complaint. The Court has reviewed the
6 document. For the reasons given below, the Court accepts the fax as a
7 filing, grants Mr. Brown an extension of time to submit the summonses and
8 USM-285 forms, denies all other requested relief at this time, and
9 imposes a filing limitation on Mr. Brown until September 6, 2011.

10 The faxed document contains several different motions and totals
11 twenty-four pages. Because the document contains several motions, the
12 Court finds it complies with Local Rule 7.1(f)'s ten-page limit for non-
13 dispositive motions. However, Mr. Brown failed to comply with Local Rule
14 7.1(h)'s notice-of-hearing requirement. Yet, given the claimed urgency
15 of the Court's need to review this document and Mr. Brown's pro se
16 status, the Court will consider the motions. Further, under the
17 circumstances, the Court accepts Mr. Brown's faxed document as a filing.¹
18 See Fed. R. Civ. P. 5(d) (allowing court to accept a faxed filing in its
19 discretion). Mr. Brown advises that he faxed the document because he did
20 not have time to mail the original to the Court by August 1, 2011, which
21 is thirty days after the Court's July 1, 2011 Order, ECF No. 24: an
22 order that Mr. Brown seeks to appeal interlocutory. Fed. R. App. P.

23
24 ¹ Mr. Brown mailed the original to the Court. The Court received
25 it on August 3, 2011. When filing the document, the Clerk's Office may
26 utilize the mailed original. However, it is to be considered filed on
August 1, 2011: the date the fax was received.

1 4(a)(1) (requiring a notice of appeal to be filed thirty days after the
2 district court's order). Mr. Brown is warned that **this is the only time**
3 **the Court will file a faxed document.** Mr. Brown must be adequately
4 organized and prepared to ensure that he can timely send an original to
5 the Court, either by mail or in person. With this caution, Mr. Brown's
6 Motion to File by Facsimile is granted.

7 Mr. Brown also asks the Court to extend the time to file and serve
8 the summonses and complaint. It appears that Mr. Brown is unclear as to
9 what his responsibilities are relating to service of the complaint.
10 Because Mr. Brown applied for, ECF No. 2, and was granted, ECF No. 3, *in*
11 *forma pauperis* status, the Court ordered the U.S. Marshals to serve the
12 three remaining un-appeared Defendants: Roger Sandburg, Sean Falcon, and
13 Josh Hart. ECF Nos. 24 & 30. Then on August 3, 2011, counsel Jarold
14 Cartwright appeared on behalf of Mr. Falcon and Mr. Hart. ECF No. 33.
15 Accordingly, Mr. Brown's service-related responsibility is limited to
16 completing the previously-provided summons and USM-285 form for only Mr.
17 Sandburg and to then submit, by mail or in person, these completed
18 documents to the Court. As the plaintiff, Mr. Brown has the
19 responsibility to provide an address for Mr. Sandburg. The Court will
20 grant Mr. Brown an additional thirty days (no later than September 6,
21 2011) to provide the completed summons and USM-285 form for Mr. Sandburg
22 to the Court. Mr. Brown's failure to submit these completed documents
23 will result in dismissal of Mr. Sandburg. Accordingly, Mr. Brown's
24 motion to extend the time to submit the summons and USM-285 form is
25 granted. His motion to extend the time to serve the complaint is denied
26 as moot.

1 Mr. Brown also seeks an extension of time to file a notice of appeal
2 of the Court's July 1, 2011 Order, ECF No. 24. As the Court has
3 explained on two prior occasions, ECF Nos. 30 & 32, its July 1, 2011
4 Order is not a final decision. Mr. Brown is correct that a non-final
5 order may possibly be appealed interlocutory. An interlocutory appeal
6 is limited to orders that "involve[] a controlling question of law as to
7 which there is substantial ground for difference of opinion" and where
8 "an immediate appeal from the order may materially advance the ultimate
9 termination of the litigation." 28 U.S.C. § 1292(b). Neither
10 requirement is satisfied here. Accordingly, the Court denies Mr. Brown's
11 motions for 1) an extension of time to file a) a notice of appeal and b)
12 a motion to certify an interlocutory appeal, and 2) certification of an
13 interlocutory appeal. Likewise, the Court denies Mr. Brown's motion to
14 stay this lawsuit pending appeal. Neither a final nor interlocutory
15 appeal is appropriate under the circumstances. The Court recognizes,
16 however, that Mr. Brown's Motion to Stay Proceedings, ECF No. 15, which
17 asks the Court to stay this federal lawsuit until a related state-court
18 lawsuit is resolved, remains pending and will be heard on October 14,
19 2011.

20 Mr. Brown also seeks leave to amend his complaint. Given the number
21 of amended complaints filed thus far by Mr. Brown, the Court finds it
22 best to have Mr. Brown re-file a motion for leave to amend after Mr.
23 Sandburg has been served and appeared so that Defendants may respond to
24 Mr. Brown's motion. Accordingly, Mr. Brown's motion for leave to amend
25 his complaint is denied at this time: he may renew his request after Mr.
26 Sandburg has appeared.

Lastly, because of Mr. Brown's continued filings, the Court finds it necessary to impose a filing stay: Mr. Brown **may not file any further documents with this Court until September 6, 2011, absent extraordinary circumstances.**

In conclusion, for the reasons given above, **IT IS HEREBY ORDERED:**

1. Mr. Brown's Motion, **ECF No. __**, 1) to File by Facsimile is **GRANTED** (the Clerk's Office is to file the document as received on August 1, 2011), 2) for Extension of Time to File and Serve Summons and Complaint is **GRANTED** (Mr. Brown must submit, by mail or in person, the completed summons and USM-285 form for Mr. Sandburg by **September 6, 2011**) and **DENIED** (complaint), 3) for Extension of Time to File Notice of Appeal is **DENIED**, 4) for Extension of Time to File Motion for Certification of Order for Permission to Appeal is **DENIED**, 5) for Certification of Order for Permission to Appeal is **DENIED**, 6) for Stay Pending Resolution of Appeals is **DENIED**, and 7) for Leave to Amend Complaint is **DENIED** with leave to renew after Mr. Sandburg has been served and appeared.

2. Until **September 6, 2011**, Mr. Brown is restricted from filing any further documents absent extraordinary circumstances. This filing restriction does not extend to submitting the required summons and USM-285 form for Mr. Sandberg.

IT IS SO ORDERED. The District Court Executive is to enter this Order and provide a copy to Plaintiff, counsel, and the U.S. Marshal.

DATED this 3rd day of August 2011.

s/ Edward F. Shea

EDWARD F. SHEA

United States District Judge

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